

INDEPENDENT REVIEW PANEL

FTAA PRISONER PROCESSING INTERIM DRAFT REPORT

Departments Reviewed: Miami-Dade Corrections & Rehabilitation Department
Miami-Dade Police Department

Committee Meeting Date: February 9, 2004

IRP Discussion Dates: February 26, March 24 and April 22, 2004

Committee: IRP Members: Sandra A. Antor, Committee Chairperson; Jorge E. Reynardus, Esq.; Chief John S. Ross; and Joseph F. Lopez, Esq. IRP Staff: Eduardo I Diaz, Ph.D., Executive Director; Carol Boersma, Executive Assistant to the Director; and Debbie Penha-Cumbermack, Community Affairs Specialist.

Present: Major Tom Knigge, Miami-Dade Police Department (MDPD) FTAA Commander; Chief Ron Kovacs, Miami-Dade Corrections & Rehabilitation Department (C&R) FTAA Coordinator; and Chief Mary Ann Puig, C&R Professional Compliance Bureau (PCB); Steven Wetstein, Amnesty International, Miami; Juanda G. Ferguson, Interested Party; Rafael Campo – Ch. 7; Rick Morris – Ch. 6; Raffo Ubillus – Ch. 4; Carolyn Salazar – Miami Herald reporter.

Committee Discussion: The discussion was focused on Prisoner Processing during the Free Trade Area of the Americas (FTAA) Ministerial conference. Issues discussed included treatment of detainees, the type and disposition of charges and the relevant contents of the MDPD After-Action Report.

MDPD established the FTAA Prisoner Transportation and Processing Detail at Earlington Heights Metrorail Station (located at NW 22 Avenue and 41 Street) to process persons arrested by MDPD. City of Miami Police Department (MPD) used the same location to process those arrested by all other law enforcement agencies. The process used by MDPD and MPD was not identical, but no one present could specify the MPD process. Prisoner processing was staffed by MDPD and C&R staff from Sunday, 11/16/03 to Friday, 11/21/03. Staffing included approximately 50 MDPD officers of all ranks and gender. The total number of MDPD arrests processed at the Prisoner Processing Site was 130.

Tuesday, 11/18/03	Arrests: 1
Wednesday, 11/19/03	Arrests: 0
Thursday, 11/20/03	Arrests: 28
Friday, 11/21/03	Arrests: 101

At the processing site, chain-link fence holding cells were built to hold arrestees until the officers were able to process them. The MDPD prisoner processing included:

- Completing Arrest Forms (A-forms);
- Applying pre-numbered flex-cuffs to prisoners and placing corresponding numbered labels on prisoners' property;
- Conducting a complete search of prisoners;
- Removing hats/glasses and/or additional items from prisoners in order to take a photograph of the prisoner; and
- Bagging/packaging prisoners' property.

FTAA Prisoner Processing Commander, Major Tom Knigge, stated that MDPD was located on the west side. Corrections staff was located on the east side, along with the City of Miami Police Department (MPD).

Chief Ron Kovacs, C&R FTAA Coordinator, stated the following: Once arrestees were turned over to C&R at Earlington Heights, C&R conducted its pre-processing prior to transporting the arrestees to Turner Guilford Knight (TGK) Correctional Center. The pre-processing included: review of arrest affidavits; medical screening by Correction's Health Services for injuries and medical needs; securing prisoners' property; and searching for contraband.

The IRP committee raised the following questions and MDPD & C&R representatives responded to those concerns.

Question #1 Were people handcuffed longer than dictated by policy?

Major Knigge stated that, at Earlington Heights, there may have been instances when arrestees were handcuffed for several hours. Prisoners who alleged that they were handcuffed for eight or more hours likely included time prior to their arrival at the processing site. He added that once at the processing site, handcuffs/flex-cuffs were taken off when arrestees had to sign paper work or go to the restroom, and then placed back on. On occasions, there were complaints that the flex-cuffs were too tight, and the cuffs were either removed temporarily or adjusted.

Major Knigge said that with the exception of juveniles and a few violent prisoners, most of the arrestees were processed at Earlington Heights. Leaders and violent prisoners were transported directly to the County Jail, and juveniles to the Juvenile Assessment Center (JAC).

Chief Kovacs stated that once arrestees were in custody of C&R, the flex-cuffs were removed, due to arrestees having to sign a property receipt. Prior to loading the buses, arrestees were re-cuffed. The arrestees were then transported to TGK for completion of the intake and identification process. Once the intake process at the jail was completed, the arrestees were placed in a regular cell without the flex-cuffs. The processing time at TGK was no more than 45 minutes.

Chief Kovacs stated there is no C&R policy addressing how long a person can be handcuffed, however, the goal is to get arrestees out of the holding cells in 4-6 hours. Chief Kovacs said there was no delay in processing FTAA arrestees at TGK due to the low number of arrests.

Chief Kovacs and Major Knigge said no one complained of employee misconduct while at the processing site or at any of the jails.

Larry Winawer and Bentley Killmon are associated with the Florida Association for Retired Americans (FLARA) and were arrested by Broward sheriff's Office (BSO) about 5 PM on November 20. Mr. Winawer stated that he was handcuffed behind his back for about 7 hours and in front for 5 hours. Mr. Killmon testified he was handcuffed behind his back for 7 ½ hours. A complaint filed on behalf of five Bates College students alleges handcuffing for over 8 hours.

IRP Comments: Prisoners were handcuffed from the time they were arrested until they arrived at a C&R Facility. The time included transport from the arrest site to the Earlington Heights Prisoner Processing Center, time in the Processing Center and transport to the C&R Facility, usually TGK. Part of the time arrestees were under the custody of MDPD, and part of the time, C&R. Arrestees were generally kept handcuffed while at the Processing Center, except when using the restroom or signing papers. Since there is a log-in time when arrestees arrived at the processing site, one could track the time on a case-by-case basis. The MDPD After-Action Report addresses intelligence reports that arrestees may use tactics to stall the process, such as changing clothes, hats or glasses with another prisoner before pictures were taken. Some intelligence also suggests some arrestees were encouraged to give false names or no name to complicate the processing.

Question #2 Were some detainees denied water and the restroom use?

Both Major Knigge and Chief Kovacs replied that to their knowledge, no one was denied water or restroom use while at the processing site and the jails. Major Knigge expressed that there were portable toilets at the processing site and water was available. Both Chief Kovacs and Major Knigge said they were unaware of a complaint about a person being denied restroom use, and as a result, defecated or urinated on his/her person.

Larry Winawer and Bentley Killmon were at the Prisoner Processing Center from approximately 8:30 PM – 12:30 AM. Both recalled that a man named "Ricky" soiled himself after begging for medical attention for pain in his shoulder. Mr. Killmon testified that he was without water for 10 hours and water was not provided until one hour after he arrived at the Turner Guilford Knight Center (TGK.) He saw no one go to the bathroom or drink water while he was at the Prisoner Processing Center.

Question #3 What evidence exists of alleged sexual abuse?

No evidence of alleged sexual abuse was provided. This allegation was made at more than one public meeting by the same person, who advised that legal counsel advice precluded providing specific testimony.

Question #4 Were prisoners transported per policy?

Chief Kovacs said to his knowledge, all prisoners were transported in accordance with policy. Ten vans were assigned to pick-up and transport arrestees directly to jail. There is no record of policy violations by MDPD officers involved in detainee transport to the processing site.

Question #5 Was the property of people arrested dumped on the street and left there?

Major Knigge said that he was not on the street. He was assigned to the processing site. The agreement with C&R was for C&R to transport small property. MDPD had a truck available to transport larger property.

The IRP referred one complaint, in which one of the allegations was that the complainant's backpack was left on the street when she was arrested, to MDPD for investigation. One witness provided a written statement that he picked up the abandoned backpack.

Question #6 Who is accountable for alleged misconduct and/or policy failure?

Major Knigge replied that officers are responsible for governing themselves in accordance with departmental Standard Operating Procedures (SOP). The command staff is responsible for investigating and/or responding to complaints. Both Major Knigge and Chief Kovacs said that they did not observe any misconduct and/or procedural violations during prisoner processing.

Question #7 What were the arrest charges?

IRP Comments: IRP staff was able to decipher the information on 121 of the Arrest Affidavits provided by MDPD; 62% had a "primary" charge of Unlawful Assembly, 17% Loitering and Prowling, 7% Resisting Without Violence and 6% Failure to Obey a Lawful Command, 2% Carrying a Concealed Weapon, and the remainder included Possession of Marijuana, Obstruction, Disorderly Conduct, etc. Some arrestees complained that they did not know why they were arrested. Apparently it is not a constitutional right to be advised of the charges at the moment of arrest, even though FSS 901.17 requires officers inform of authority and cause of arrest. The legal opinion suggests it is a "ministerial duty." Some were charged with "resisting" if they refused to give their name which, according to legal opinion documented in the After-Action Report, is allowed. At a subsequent meeting of the Independent Review Panel, February 26th, it was clarified that during prisoner processing each arrestee received a copy of the Arrest Form (A form) with charges that formed the basis for the arrest.

Question #8 What were the dispositions of the charges?

IRP Comment: The MDPD After Action Report states, "...most arrests made by MDPD officers resulted in probable cause findings by judges." Staff looked at the 82 arrests on November 21, which resulted in 102 charges filed by the SAO. Data taken from the Criminal Justice Information System on 5/16/04 revealed the following:

Nolle Pros	Acquitted	Deferred Prosecution Program	Dismissed	Withheld adjudication w/ fine & cost	Dropped, Sealed or Pending
47	8	11	1	16	19

Miami Activist Defense maintains "Legal Stats" at a website that reports convictions to date. (See www.stopftaa.org/legal) The State Attorney's Office has not responded to requests for disposition data.

Question #9 How many people arrested were local? Out of towners?

An assessment of MDPD arrest forms provided to the IRP suggests that 13% of MDPD arrestees were from Florida and 5% gave a Miami address. 82% were from out-of-state or gave no address.

Question #10 What Policy and/or procedure need to change?

The MDPD After-Action Report addresses this (section entitled “Prisoner Processing, Concerns and Recommendations” on p.12). Major Knigge added that the overall function of prisoner processing worked well. Chief Kovacs said he was present at the processing site from 12-14 hours a day. He commented that the site was well supervised and personnel were very professional.

Chief Kovacs said “to this day [2/9/04], the Department has received not one complaint” and he does not recommend any policy changes. Chief Mary Ann Puig, of C&R Professional Compliance Bureau (PCB), expressed that she checked the C&R complaint logs before and after the FTAA conference, from 11/11/03 to 12/9/03, and no complaints were received by C&R.

IRP Comment: On 1/27/04 the IRP formally requested that C&R investigate allegations made by 5 Bates College students relating to handcuffing and the provision of water.

Other Comments/Questions

Detainee Decontamination: Tear gas was deployed on Thursday by the City of Miami Beach Police, according to testimony heard at the February 5th Miami Civilian Investigative Panel (CIP) meeting. However, the chemical used on Friday by MDPD was pepper spray. At a subsequent Use of Force Committee meeting, March 5, 2004, Major Battle clarified that in addition to the one OC canister mentioned above, 3 pepper balls were deployed as well.

Major Knigge said that any prisoner who exhibited signs of being exposed to chemicals, approximately 10-20 arrestees, received a “wash down” for decontamination.

The Miami Fire Rescue HazMat Bureau provided a copy of its FTAA “Earlington Heights Decon” policy. Fire Rescue had Decon units in the field and a more complete facility at the Prisoner Processing Center.

Courts and Prisoner Processing: Ms. Antor asked about a statement in the MDPD After-Action Report Executive Summary, Page 6, that reads: “The courts assisted by staggering bond hearings and releases so that arrestees were not able to quickly return to the conference site.” No one present from MDPD or C&R was aware of any such policy or practice. The Administrative Office of the Courts responded to an inquiry about the statement by saying that the Court *increased* the number of bond hearings “to process arrested demonstrators in a timely fashion, rather than delaying their ability to quickly return to the conference site.”

Comments from the Floor: Steven Wetstein inquired about the early withdrawal of the Miami Dade Fire Department (MDFD) decontamination unit. Major Knigge replied that MDFD returned and were active before prisoners arrived at the processing site on Friday.

Wanda Ferguson stated she was on Biscayne Boulevard on Thursday, November 20, and she saw no misconduct by protestors or police officers. However, she did see on TV a citizen pushed down by a police officer in riot gear.

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